

In the Matter of Police Officer, Palisades Interstate Park Commission
DOP Docket No. 2006-1547
(Merit System Board, decided April 26, 2006)

The Palisades Interstate Park Commission requests the reallocation of the title of Police Officer, Palisades Interstate Park, from the career to the unclassified service, pursuant to *N.J.S.A. 32:14-21*.

The title of Police Officer, Palisades Interstate Park, is currently allocated to the career service. Presently, there are 21 incumbents with permanent status in the Police Officer title, five incumbents with career service status in the Police Sergeant title, and one incumbent with permanent status in the Police Lieutenant title. The title of Police Chief, Palisades Interstate Park, is allocated to the unclassified service, pursuant to *N.J.S.A. 32:14-4.1*. The appointing authority requested that the title of Police Officer be reallocated to the unclassified service, pursuant to *N.J.S.A. 32:14-21*, which provides that the Palisades Interstate Park Commission “may appoint such patrolmen to hold office at the pleasure of the commission or for such term as the commission may determine.” The appointing authority indicated that its request was aimed at improving employee retention and pay equity. The incumbents, the appointing authority, and the affected collective bargaining units were provided notice and an opportunity to present their positions in this matter in writing. In addition, a public hearing was conducted on January 25, 2006, pursuant to *N.J.S.A. 11A:3-6*, to solicit comments from the public.

In response to the request for written submissions, the New Jersey Corrections Association (NJCA), the collective bargaining unit for those serving as Police Officers, Palisades Interstate Park, represented by Joseph A. Carmen, Esq., argues that the title of Police Officer, Palisades Interstate Park, is “included in the Collective Bargaining Agreement (CBA)” currently in effect. It argues that the title’s inclusion in the CBA requires that “the terms and conditions of employment are subject to good faith negotiations between the certified representative and the employ[er].” NJCA contends that the request to reallocate this title to the unclassified service “can only be construed as an attempt to break the union,” and it expresses its strong objection to the reallocation.

The New Jersey Law Enforcement Supervisors Association (NJLESA), the collective bargaining unit for Police Sergeants, Palisades Interstate Park, represented by Frank M. Crivelli, Esq., suggests that the appointing authority’s goals of improving employee retention and pay equity could more effectively be accomplished through collective negotiations with the affected bargaining units. It contends that such negotiation is necessary, pursuant to the current collective bargaining agreement, the New Jersey Public Employee Relations Act and the

federal Fair Labor Standards Act. As such, the NJLESA emphatically opposes the requested reallocation. The NJLESA also asserts that *N.J.S.A. 32:14-21* does not confer upon the appointing authority the unilateral ability to reclassify the titles at issue. In support of this contention, the NJLESA emphasizes that other sections of the enabling statute suggest that the Merit System Board (formerly the Civil Service Commission) retains the authority to review the classification of titles utilized by the Palisades Interstate Park Commission and determine the appropriate salary levels for these positions. See *N.J.S.A. 32:14-4* and *N.J.S.A. 32:14-1.10*.

At the public hearing and in a subsequent written submission, the NJLESA reiterates its position that the appointing authority's goals could be more effectively accomplished through collective bargaining. It also submits a November 3, 2005 memorandum from John J. Parr, Police Chief, Palisades Interstate Park Commission, to his subordinates, which the NJLESA asserts demonstrates the attempts to interfere with the collective bargaining process. In the memorandum, Parr directs his subordinates:

If the union makes contact [regarding this matter] they should then be advised that the officers agreed [to a reallocation to the unclassified service]. I do not believe our officers should seek or encourage union opposition.

The NJLESA argues that the proposed reallocation will have a chilling effect on collective negotiations, and it will result in disparities between officers, since current incumbents will retain their career service rights, but future hires will have no tenure protection.

The New Jersey Superior Officers Law Enforcement Association (NJSOA), representing Police Lieutenants, Palisades Interstate Park, contends that the appointing authority's request constitutes "union busting," and it vehemently objects to the proposed action.

At the public hearing and in a subsequent written submission, the NJSOA emphasizes that the appointing authority has never reached out to the collective bargaining units in an attempt to mutually develop a plan to address the issues of employee retention and salary inequities. Rather, the appointing authority unilaterally determined the route to pursue in order to achieve its goals. The NJSOA also contends that the statutory authority cited by the appointing authority, *N.J.S.A. 34:14-21*, does not expressly address the issue of unclassified appointments of employees. Moreover, it contends that the law enforcement title series does not fall within the categories of unclassified titles enumerated in *N.J.S.A. 11A:3-4*. Similarly, it contends that the law enforcement title series does not meet the standard set forth in *N.J.A.C. 4A:3-1.3(a)5* for allocation of a title to the unclassified

service, since “[i]t is the industry standard to determine merit and fitness for duty in considering employment to, and the promotional opportunities in, law enforcement titles” via the DOP’s law enforcement examinations. Additionally, the NJSOA maintains that the appointing authority has engaged in “union busting” by negotiating salary and other terms of employment directly with its employees, which is prohibited by the CBA. Finally, the NJSOA argues that the salary disparities can be better accomplished through negotiation and salary reevaluation.

At the public hearing, Jeff Nealis, a representative from the Fraternal Order of Police, voiced opposition to the proposed reallocation. He argued that employees invested time and effort in taking the law enforcement examination with the expectation that they would enjoy the protections of Title 11A upon hire. While he recognized that current incumbents will retain their career service status so long as they remain in their current titles, he notes that current incumbents will, therefore, face the unfair choice of retaining their tenure rights in their current titles or accepting a promotion. He suggested that this will result in newly hired unclassified appointees “leapfrogging” current incumbents who wish to retain their career service protections. Finally, Nealis suggested that the appropriate avenue to address the issues presented would be through a salary reevaluation.

Parr asserts that, contrary to the unions’ positions, he and the current incumbents are strongly in favor of the reallocation of the titles at issue. Parr argues that the placement of the title in the career service precludes the appointing authority from competing with the salary levels offered for police personnel in surrounding municipal jurisdictions. Therefore, the Palisades Interstate Park Commission experiences a high employee turnover rate, and it invests much time, effort, and money in training law enforcement personnel only to lose a large number of trained employees to other jurisdictions. Parr also contends that the high rate of turnover undermines the attempts at maintaining a stable work force and adversely affects employee morale.

At the public hearing and in a subsequent written submission, Parr emphasized that the ability to retain trained officers is a paramount concern and has serious public safety implications. Parr avers that specialized training is required of his officers, and the ability to retain officers with such training will enable the Palisades Interstate Park Commission to better provide the public with effective and efficient services. Parr asserts that, due to the remote location and low salary levels, his recruitment efforts have essentially been reduced to asking his officers to solicit friends and former co-workers to apply for employment or transfers. In addition, Parr emphasizes that all current officers were formally polled regarding their support of the proposed reallocation, and, at that time, they all expressed their strong support for the reallocation. Finally, Parr argues that the appointing authority clearly possesses the statutory authority to hire future employees in the unclassified service.

The appointing authority echoes the arguments presented by Parr. It presents a chart comparing the top salary of its patrolmen to that of neighboring jurisdictions, which shows that the highest salary for Police Officers, Palisades Interstate Park is just 65% that of personnel in nearby municipalities. In addition to the high turnover rate that results from this disparity, the appointing authority emphasizes that open-competitive recruitment has become difficult. In this regard, the appointing authority notes that it was only able to draw one candidate from a recent certification of 75 names, and many candidates from that certification accepted positions with other jurisdictions due to the higher salaries that are offered.

At the public hearing and in a subsequent written submission, the appointing authority emphasizes that *N.J.S.A. 34:14-21* provides clear statutory authority for placing these titles in the unclassified service. It notes that these titles existed in the unclassified service until 1971, but it is unclear why the titles were reallocated to the career service for the last 35 years. The appointing authority argues that the proper classification of titles is not a topic to be addressed by collective bargaining, and it asserts that the unions have failed to present any substantive reasons to oppose the proposed reallocation. The appointing authority emphasizes the goals it hopes to achieve in moving forward with the reallocation of these titles to the unclassified service: to resolve salary inequities and improve employee retention. The appointing authority also asserts that placement in the unclassified service will reduce the “pool of eligible locations our officers can transfer into” via the Intergovernmental Transfer Program and encourage long-term employment with the Palisades Interstate Park Commission. Finally, the appointing authority denies the allegations that it engaged in direct negotiations with employees who are covered by a CBA; rather, the appointing authority indicates that the officers were advised that this was the avenue it would be pursuing.

The Division of Human Resource Management (HRM) reports that the title of Police Officer, Palisades Interstate Park, has been in the career service since 1971. While HRM confirms the appointing authority’s representation that the title series was previously allocated to the unclassified service for a number of years, no further information regarding the reasons for the change in the class of service in 1971 is available. It also notes that the subject title series was given a one salary range increase in 1994, and no basis has been presented at the present time for another upward reevaluation of these titles. HRM also notes that it discussed the possibility of implementing a special salary program based on geographic differentials with the appointing authority in the past. However, HRM asserts that the appointing authority was unable to provide data to support its claim that police officer salaries in surrounding jurisdictions were significantly different. Finally, HRM states its general opposition to a reallocation to the unclassified service.

CONCLUSION

Initially, the Merit System Board (Board) declines to address the allegations that the appointing authority is interfering with the collective bargaining process. Such an issue falls within the jurisdiction of the Public Employment Relations Commission.

Turning to the merits of the request, *N.J.S.A.* 11A:3-1 provides that the Board shall assign and reassign titles among the career service, senior executive service, and unclassified service. *N.J.S.A.* 11A:3-4(l) provides that the State unclassified service shall include all “titles as provided by law or as the [B]oard may determine.” Similarly, the enabling legislation at issue reiterates the Board’s ability to determine the appropriate class of service for employees of the Palisades Interstate Park Commission. *See N.J.S.A.* 32:14-4 (“Those positions which the [Merit System Board] shall determine should be allocated to the unclassified service, shall be allocated to the unclassified service.”) *N.J.A.C.* 4A:3-1.3(a) provides:

A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
2. In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
3. The title is designated unclassified by another specific statute;
4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

In the instant matter, while *N.J.S.A.* 32:14-21, enacted in 1939, provides that the Palisades Interstate Park Commission “may appoint such patrolmen to hold office at the pleasure of the commission or for such term as the commission may determine,” subsequent statutes indicate that it was the intent of the Legislature that police officers employed by the Commission would be in the career service. In particular, *N.J.S.A.* 32:14-4, which governs the Commission’s employment powers, was amended in 1970 (L. 1970, c.130) to provide for civil service coverage of the Commission’s employees. In pertinent part, it was amended as follows (additions shown in **bold face**; deletions shown in [brackets]):

Palisades Interstate Park Commission shall have power to appoint such employees as it may deem necessary to carry out the provisions of the Palisades Interstate Park compact and the purposes of this

subtitle, **subject to the provisions of the applicable Civil Service Statute of the party states**, and may employ counsel. It may also determine the duties [and compensation] of its appointees [and remove them at pleasure], and make all reasonable rules and regulations respecting them.

The 1970 amendments also provided for permanent status for employees in classified (now career service) titles who had been employed for at least six months prior to the amendment. However, the Civil Service Commission (now the Merit System Board) was given the authority to determine which positions should be allocated to the unclassified service:

All offices, positions or employments held by such employees on the effective date of this amendatory act and so held continuously for a period of not less than six months prior thereto, which can be allocated to the classified service in accordance with the provisions of Title 11 of the Revised Statutes, shall be so allocated under appropriate titles by the Civil Service Commission and such persons shall be recorded, without examination, as having been permanently appointed thereto as of the dates of their respective original appointments by the commission under said titles and shall thereafter be under and subject to all provisions of Title 11 relating to the classified service of the civil service. Those positions which the Civil Service Commission shall determine should be allocated to the unclassified service, shall be allocated to the unclassified service.

In 1981, *N.J.S.A. 32:14-4.1* was enacted, providing for the appointment of a Chief of Police in the unclassified service. In 1994, *N.J.S.A. 32:14-4.3* was enacted, providing for the appointment of a Superintendent and an Assistant Superintendent, both of whom would be in the unclassified service.

The New Jersey Supreme Court dealt with a similar statutory construction issue in *Grobart v. Grobart*, 5 *N.J.* 161 (1950). “The inquiry in construing statutes is to determine the purpose and intent of the Legislature. If the statute alters or amends the previous law or creates or abolishes types of actions, it is important, in discovering the legislative intent, to ascertain the old law, the mischief and the proposed remedy.” *Id.* at 166. Again, in *Brewer v. Porch*, 53 *N.J.* 167 (1969), the Court explained:

. . . in seeking to ascertain the legislative intent, it is essential that certain cardinal principles of statutory construction be kept in mind. The first of these is that, ordinarily, implied repealers are not favored in the law . . . However, when a later expression of legislative will is so clearly in conflict with an earlier statute on the same subject that the

two cannot reasonably stand together, . . . the courts will find a legislative intent to supersede the earlier law. The test is whether the two statutes are inconsistent or repugnant. [*Id.* at 173.]

It is evident from the 1970, 1981 and 1994 amendments that the Legislature intended to supersede the previous statute which allowed for employees to serve at the pleasure of the Commission. The new statutes provided for the application of the Civil Service statutes, but later provided that the positions of Chief of Police, Superintendent and Assistant Superintendent be placed into the unclassified service as the need arose. If the Legislature had intended all police officers to be unclassified, the 1981 and 1994 amendments would have stated as much.

Moreover, a strong indicator of legislative intent is found in longstanding administrative practice. “[I]n construing a doubtful statute, a resort may be had to the contemporaneous construction, long usage, and practical interpretation given to it by the administrative agency charged with its effectuation.” *Malone v. Civil Service Comm’n*, 80 N.J. 129, 136 (1979). See also *The Passaic Daily News v. Blair*, 73 N.J. 474, 484 (1973); *Pringle v. N.J. Dept. of Civil Service*, 45 N.J. 329 (1965). “Furthermore, an agency’s construction of a statute over a period of years without legislative interference will under appropriate circumstances be granted great weight as evidence of its conformity with the legislative intent.” *Malone, supra*. The fact that immediately following the 1970 statutory amendment, police officers were placed in the career service and have been there ever since, despite intervening legislative amendments, is a strong indication that their placement in the career service comported with the intent of the Legislature. The fact that the legislative amendments of 1981 and 1994 effected the switch of the positions of Chief of Police, Superintendent and Assistant Superintendent to the unclassified service is even more indication that the Legislature intended for police officers to be in the career service.

Thus, despite the well-recognized principle of statutory construction that the provisions of a specific statute will prevail over a general statute, *Kingsley v. Wes Outdoor Advertising Co.*, 55 N.J. 336, 339 (1970); *Goff v. Hunt*, 6 N.J. 600 (1951), the above demonstrates that in this case, the legislature intended the subsequent amendment to supersede the original 1939 statute. The fact that immediately after the 1970 amendment, officers were placed in the career service and have remained there ever since, through two subsequent statutory amendments, makes it clear that the Legislature intended officers to serve in the career service, possessing all the protections the Civil Service Act provides.

Therefore, although the Legislature never amended the above quoted language of N.J.S.A. 32:14-21, the Legislature’s intent is clearly evident from the subsequent series of enactments: New Jersey employees of the Palisades Interstate Park Commission would be employed subject to civil service law and rules and

would be assigned to the career service, with the exception of the Chief of Police, the Superintendent, the Assistant Superintendent, and such other titles as designated by the Merit System Board.

In light of the above, the aforementioned regulation, *N.J.A.C.* 4A:3-1.3(a)4, which at first inspection appears to be dispositive on the issue of allocation of police officers to the unclassified service because a specific statute, *N.J.S.A.* 32:14-21, provides that patrolmen serve at the pleasure of the commission or for such term as the commission may determine, is not applicable because subsequent statutes supersede that statute and therefore do not trigger the application of the cited regulation.

Moreover, it is evident that the reallocation of these titles to the unclassified service will not achieve the goals advanced by the appointing authority. Specifically, *N.J.S.A.* 11A:3-7 authorizes the Commissioner of the Department of Personnel to administer an equitable compensation plan, applicable to all State employees regardless of their class of service. To that end, the Commissioner is vested with the authority to assign appropriate class codes to titles in the career, senior executive, and unclassified services. See *N.J.A.C.* 4A:3-4.2(a). The designated class code, in turn, determines the assigned salary range for a title. See *N.J.A.C.* 4A:3-4.2(b). Further, *N.J.A.C.* 4A:3-4.1(d)2 provides that each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title. Thus, a change in a title's class of service will not, without more, impact its assigned class code and corresponding salary range.

Thus, the appointing authority's argument that it has the statutory authority to set the compensation of its employees, and if they were in the unclassified service, it would have the ability to do so, is misplaced. As mentioned above, the statute, *N.J.S.A.* 32:14-4, was amended in 1970 and deleted the provision that the Commission has the power to determine compensation of its employees. This deletion was obviously made because the Legislature intended at that time to place the employees in the classified service, at which time their compensation would be set by the Commissioner of Personnel. Thus, granting the relief requested in the instant matter, a reallocation to the unclassified service, will simply have no effect on the employees' salaries.

In sum, permanent appointments to these titles have, for 35 years, been made through the examination and selection processes set forth in Merit System law and regulations, and it has not been asserted that these procedures are no longer adequate or feasible to measure merit and fitness for the affected titles. Although the appointing authority cites certain issues related to recruitment from eligible lists provided by the Department of Personnel, these problems clearly stem from the compensation offered for the positions. As set forth in more detail above, a

reallocation will not result in an increase in the salaries of employees in the affected titles. Similarly, there is no claim that the tenure rights afforded to employees in the career service have interfered with the services performed by the Palisades Interstate Park Commission. Accordingly, because the reasons advanced by the appointing authority to support a reallocation will not be impacted by such action, and because the statute dictates that Police Officers in the Palisades Interstate Park Commission be in the career service, the Board concludes that the instant request should be denied.

Nevertheless, the Board is mindful of the appointing authority's concerns regarding the current compensation levels of employees serving in these titles. Thus, it is appropriate to refer this matter to the Division of Human Resource Management for processing under *N.J.A.C. 4A:3-4.3* to ascertain whether the present circumstances warrant a reevaluation of the class codes and corresponding salary ranges of these titles.

ORDER

Therefore, it is ordered that this request be denied.

It is further ordered that this matter be referred to the Division of Human Resource Management for processing as a request for a salary reevaluation, pursuant to *N.J.A.C. 4A:3-4.3*.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.